

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GARY WAYNE WARNER,  
ID # 861634,  
Petitioner,

vs.

DIRECTOR, Texas Department of Criminal  
Justice, Correctional Institutions Division,  
Respondent.

No. 3:20-CV-858-B-BH

AMENDED ORDER ACCEPTING FINDINGS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND DENYING CERTIFICATE OF APPEALABILITY

Before the Court is the *Petitioner's Objection to Magistrates [sic] Finding(s) Conclusions & Recommendation-Fed. R. Civ. P60(b)*, received on June 28, 2021 (doc. 42). The petitioner signed the objection on June 8, 2021. (*See id.*)

On June 1, 2021, the United States Magistrate Judge recommended that the petitioner's motion under Federal Rule of Civil Procedure 60(b) be denied. (*See* doc. 40.) By order filed June 16, 2021, the Court accepted the Magistrate Judge's recommendation and denied the petitioner's Rule 60(b) motion, not having seen the petitioner's objection. (*See* doc. 41.) In light of the petitioner's *pro se* status and the interest of justice, the Court now considers the objection.

After a *de novo* review of those portions of the proposed findings and recommendation to which objection was made, the Court overrules the petitioner's objection. Having reviewed all relevant matters of record in this case, including the Findings, Conclusions, and Recommendation of the Magistrate Judge and the petitioner's objection thereto, in accordance with 28 U.S.C. § 636(b)(1), the undersigned District Judge is of the opinion that the Findings and Conclusions of the Magistrate Judge are correct and they are accepted as the Findings and Conclusions of the Court.

For the reasons stated in the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, the *Petitioner's Rule 60(b)(4)(6) Motion*, received on May 24, 2021 (doc. 39), is **DENIED**.

In accordance with Fed. R. App. P. 22(b) and 28 U.S.C. § 2253(c) and after considering the record in this case and the recommendation of the Magistrate Judge, the petitioner is **DENIED** a Certificate of Appealability. The Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions and Recommendation in support of its finding that the petitioner has failed to show (1) that reasonable jurists would find this Court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).<sup>1</sup>

In the event that the petitioner files a notice of appeal, he must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis* that is accompanied by a properly signed certificate of inmate trust account.


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<sup>1</sup> Rule 11 of the Rules Governing Section 2255 Proceedings for the United States District Courts, as amended effective on December 1, 2019, reads as follows:

**(a) Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

**(b) Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability. These rules do not extend the time to appeal the original judgment of conviction.

SIGNED this 1<sup>st</sup> day of July, 2021.



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JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE